

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 May 2024

DOCKET NUMBER: AR20230011150

APPLICANT REQUESTS: Reconsideration of his previous request for upgrade of his under other than honorable conditions (UOTHC) discharge.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

DD Form 293 (Application for the Review of Discharge)

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20110004755 on 21 September 2011.
2. The applicant requests upgrade of his discharge.
3. The applicant enlisted in the Army National Guard (ARNG) on 7 December 2006. He entered active duty on 26 February 2007. He was honorably released from active-duty training on 6 July 2007 and transferred back to the ARNG. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 4 months and 11 days of net active service.
4. He was honorably discharged from the ARNG for enlistment in another component of the U.S. Armed Forces on 25 November 2007. His NGB Form 22 (Report of Separation and Record of Service) shows he completed 11 months and 20 days of net service.
5. The applicant enlisted in the Regular Army on 26 November 2007. His military occupational specialty was 21C (Bridge Crewmember).
6. The applicant was absent without leave (AWOL) on 4 January 2008.
7. Court martial charges were preferred against the applicant on 2 February 2008. His DD Form 458 (Charge Sheet) shows he was charged with, without authority and with

intent to remain away therefore permanently, absenting himself from his unit on or about 3 January 2007 and did remain absent in desertion.

8. The applicant was dropped from the rolls on 3 February 2008. He was apprehended by civil authorities, returned to military control, and present for duty on 7 April 2008.

9. Court martial charges were preferred against the applicant on 17 April 2008. His DD Form 458 shows he was charged with absenting himself from his organization on or about 4 January 2007 until on or about 7 April 2008.

10. The applicant's AWOL/Interview Report Form, dated 17 April 2008, shows he did not request to remain on active duty. He went AWOL for personal and family problems. He did not see any one prior to going AWOL.

11. The applicant consulted with legal counsel on 18 April 2008, and was advised of the basis for the contemplated trial by court-martial; the maximum permissible punishment authorized under the Uniform Code of Military Justice (UCMJ); the possible effects of a UOTHC discharge and the procedures and rights that were available to him.

a. After consulting with legal counsel, he voluntarily requested discharge under the provision of Army Regulation (AR) 635-200 (Active-Duty Enlisted Administrative Separations), Chapter 10, in for the good of the service, lieu of trial by court-martial. He further acknowledged he understood that if his discharge request was approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veterans Administration, and he could be deprived of his rights and benefits as a veteran under both Federal and State laws and he may expect to encounter substantial prejudice in civilian life because of an UOTHC discharge.

b. He elected not to submit statements in his own behalf, and he did not desire a physical evaluation prior to separation.

12. The applicant's commander recommended approval of his request for discharge for the good of the service-in lieu of trial by court-martial on 18 June 2008. She further recommended a UOTHC discharge. The applicant was charged with AWOL and apprehended by civilian authorities. Trial counsel found there were no legal objections to further processing the request.

13. The separation authority approved the applicant's request for discharge in lieu of trial by court-martial on 30 June 2008. He directed the applicant's reduction to the lowest enlisted grade with the issuance of a UOTHC discharge.

14. The applicant was discharged on 21 July 2008. His DD Form 214 shows he was discharged under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-

martial. His service was characterized as UOTHC. He completed 4 months and 22 days of net active service. He had lost time from 4 January 2008 to 7 April 2008. He was awarded the National Defense Service Medal and the Army Service Ribbon.

15. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

16. On 6 August 2009, the Army Discharge Review Board (ADRB) determined the applicant was properly discharged and denied his request for a change in the character and/or reason for his discharge.

17. On 28 June 2012, the applicant requested to withdraw his application to the ADRB and since his request was not received in writing and he did not attend the scheduled board in Chicago, IL his case was closed.

18. On 10 September 2009, the ADRB could not act since the board had previously considered his case in Docket Number AR20080015772.

19. On 28 February 2011, Army Review Boards Agency (ARBA) notified the applicant he must direct his application to the ABCMR for consideration.

20. On 21 September 2011, the ABCMR determined the evidence presented did not demonstrate the existence of a probable error or injustice. Therefore, the Board determined that the overall merits of this case were insufficient as a basis for correction of the applicant's records.

21. On 24 February 2012, the ABCMR notified the applicant that his case was considered on 11 September 2011 and reconsideration would only be considered if he provided new evidence or argument that was not considered at the time of the ABCMR's prior consideration.

22. On 3 May 2012, 27 July 2012, 23 October 2012, 19 December 2012, 8 January 2013, 13 January 2017, and 2 May 2017, ARBA notified the applicant that he was not eligible for further reconsideration by this board.

23. On 13 February 2020, the ABCMR again returned the applicant's request for reconsideration without action.

24. In reaching its determination, the Board can consider the applicant's petition and service record in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

The Board carefully considered the applicant's request, evidence in the records, and published Department of Defense guidance for consideration of discharge upgrade requests. The Board considered the applicant's record of service, the frequency and nature of his misconduct, the reason for his separation, and whether to apply clemency. The Board found insufficient evidence of in-service mitigating factors and the applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon separation was not in error or unjust.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined that the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Number AR20110004755 on 21 September 2011.

9/20/2024

X

CHAIRPERSON

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. AR 15-185 (ABCMR) sets forth procedures for processing requests for the correction of military records. Paragraph 2-15a governs requests for reconsideration. This provision of the regulation allows an applicant to request reconsideration of an earlier decision of the ABCMR. The applicant must provide new relevant evidence or argument that was not considered at the time of the ABCMR's prior consideration.

2. AR 635-200, Personnel Separations, in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate. When a Soldier is discharged before ETS for a reason for which an honorable discharge is discretionary, the following considerations apply. Where there have been infractions of discipline, the extent thereof should be considered, as well as the seriousness of the offense(s).

b. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 of that regulation provides that a Soldier who has committed an offense or offenses, the punishment for which includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. The discharge request may be submitted after court-martial charges are preferred against the Soldier or where required, after referral, until final action by the court-martial convening authority.

3. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NR) on 25 July 2018, regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards

shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

//NOTHING FOLLOWS//